

Amendments to House Bill No. 662
3rd Reading CopyDate 4-8-09Bill No. HB 662

Requested by Representative Elsie Arntzen

For the Senate Public Health, Welfare and Safety Committee

Prepared by Bartley Campbell
April 8, 2009 (1:57pm)

1. Page 1, line 11.
Strike: "10"
Insert: "9"
2. Page 1, line 17.
Strike: "10"
Insert: "9"
3. Page 1, line 18.
Strike: "10"
Insert: "9"
4. Page 1, line 21.
Strike: "10"
Insert: "9"
5. Page 1, line 23.
Strike: "11"
Insert: "10"
6. Page 1, line 28.
Strike: "10"
Insert: "9"
7. Page 2, line 1.
Following: "stretching"
Insert: "or movement"
8. Page 2, line 2.
Following: "range of"
Strike: "movement"
Insert: "motion"
9. Page 2, line 11.
Following: "SCOPE OF"
Strike: "THE"
10. Page 2, line 13.
Following: "or"
Insert: "strengthening"

Following: "exercise,"
Insert: "strengthening"
Following: "tape"
Insert: "when applied to restrict joint movement"

11. Page 2, line 17.

Strike: "10"

Insert: "9"

12. Page 2, line 22 through line 23.

Strike: "Massage" on line 22 through "Montana." on line 23

13. Page 2, line 27.

Strike: "10"

Insert: "9"

14. Page 2, line 29.

Strike: "10"

Insert: "9"

15. Page 3, line 9.

Following: "integration"

Strike: "or"

Insert: ", "

Following: "Rolfing"

Insert: ", "

16. Page 3, line 20.

Strike: "10"

Insert: "9"

17. Page 3, line 21 through line 22.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

18. Page 3, line 25 through line 26.

Strike: subsection (4) in its entirety

Renumber: subsequent subsections

19. Page 3, line 30.

Following: "public"

Insert: "as provided for in Title 37, chapter 1"

20. Page 4, line 2 through line 20.

Strike: Section 6 in its entirety

Renumber: subsequent sections

21. Page 4, line 23.

Strike: "9"

Insert: "8"

22. Page 4, line 25.

Strike: "8"

Insert: "7"

23. Page 4, line 26.

Strike: "9"

Insert: "8"

24. Page 5, line 1.

Strike: "10"

Insert: "9"

25. Page 5, line 4.

Strike: "7"

Insert: "6"

26. Page 5, following line 7.

Insert: "(c) must possess a high school diploma or its
equivalent;"

Renumber: subsequent subsections

27. Page 5, line 10.

Following: "required to"

Insert: ": (a)"

28. Page 5, line 11.

Following: "meets"

Insert: "or exceeds"

29. Page 5, line 11 through line 13.

Strike: "criteria" on line 11 through "(a)" on line 13

Insert: "curriculum guidelines established by any program or
organization accredited by the national commission for
certifying agencies or its equivalent or successor and"

30. Page 5, line 18.

Strike: "may"

Insert: "shall"

31. Page 5, line 21.

Following: "SECTION"

Insert: "and that the applicant meets the requirements of
[section 7(1)(a), (1)(b), (1)(d), and (1)(e)]"

32. Page 5, line 29.

Strike: "8"

Insert: "7"

33. Page 5, line 30.

Strike: "8"
Insert: "7"

34. Page 6, line 4.
Strike: "10"
Insert: "9"

35. Page 6, line 10.
Following: "practitioner"
Insert: "or an owner of a school that educates massage therapists"

36. Page 6, line 12 through line 13.
Strike: "Montana" on line 12 through "physician" on line 13
Insert: "licensed health care provider in good standing in Montana"

37. Page 6, line 16.
Following: "board."
Insert: "None of the three massage therapists may belong to the same national professional association."

38. Page 6, line 17.
Strike: "10"
Insert: "9"

39. Page 28.
Strike: "10"
Insert: "9"

40. Page 6, line 29.
Strike: "10"
Insert: "9"

41. Page 6, line 30.
Strike: "11"
Insert: "10"

42. Page 7, line 1.
Strike: "11"
Insert: "10"

- END -

HOUSE BILL NO. 662

INTRODUCED BY E. ARNTZEN

A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND REGULATING MASSAGE THERAPISTS; ESTABLISHING A BOARD OF MASSAGE THERAPISTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING FOR A TRANSITIONAL LICENSE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ⁹10] may be cited as the "Massage Therapy Licensing Act".

NEW SECTION. Section 2. Purpose. (1) The legislature finds that the practice of massage therapy affects the health, safety, and welfare of the people of this state and declares that the practice of massage therapy contributes to choice in health care.

(2) It is the purpose of [sections 1 through ⁹10] to regulate the massage therapy profession, to create a board of massage therapy that will issue massage therapy licenses in accordance with [sections 1 through ⁹10] and the board's rules, and to define the terminology describing competencies of the massage therapy profession.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through ⁹10], the following definitions apply:

(1) "Board" means the board of massage therapy provided for in [section ¹⁰11].

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" means a person who is licensed by the board to practice massage therapy. The terms are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in [sections 1 through ⁹10] includes the others.

(4) (a) (i) "Massage therapy" when provided by a massage therapist means the application of a system of structured touch, pressure, positioning, or holding to soft tissues of the body, Swedish massage, effleurage,

1 petrissage, tapotement, percussion, friction, vibration, compression, passive and active stretching, within the
 2 normal anatomical range of ^{motion} movement, the external application of water, heat, cold, lubricants, salts, skin
 3 brushing, or other topical preparations not classified as prescription drugs, providing information for self-care
 4 stress management, and the determination of whether massage is contraindicated and whether referral to another
 5 health care practitioner is recommended.

6 (ii) The techniques described in subsection (4)(a)(i) must be applied by the massage therapist through
 7 the use of hands, forearms, elbows, knees, or feet or through the use of hand-held tools that mimic or support
 8 the action of the hands and are primarily intended to enhance or restore health and well-being by promoting pain
 9 relief, stress reduction, and relaxation.

10 (b) The term does not include PROVIDING EXAMINATIONS FOR THE PURPOSE OF diagnosis, PROVIDING
 11 TREATMENTS THAT ARE OUTSIDE THE SCOPE OF THE MASSAGE THERAPY, or attempts to adjust, manipulate, or mobilize
 12 any articulations of the body or spine by the use of high-velocity, low-amplitude thrusting force, ^{strengthening} manual therapy
 13 ^{strengthening} or exercise, ^{strengthening} exercise instruction or prescription, or the use of tape, ^{when applied to restrict joint movement} MANUAL OR mechanical traction WHEN APPLIED
 14 TO THE SPINE OR EXTREMITIES FOR THE PURPOSES OF JOINT MOBILIZATION OR MANIPULATION, injection therapy, laser
 15 therapy, microwave diathermy, electrical stimulation, ultrasound, iontophoresis, or phonophoresis.

16
 17 **NEW SECTION. Section 4. Exemptions -- rules.** (1) The provisions of [sections 1 through 10] do not
 18 limit or regulate the scope of practice of any other profession licensed under the laws of this state, including but
 19 not limited to medicine, dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture,
 20 veterinary medicine, occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, esthetics,
 21 electrology, professional counseling, social work, psychology, or athletic training.

22 (2) ~~Massage therapy continuing education courses may be taught by instructors who do not reside in~~
 23 ~~Montana.~~ A continuing education course instructor is not required to be licensed as a massage therapist.

24 (3) A massage therapy student, when enrolled in a board-approved program and while practicing the
 25 skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed
 26 massage therapist, is not required to be licensed.

27 (4) The provisions of [sections 1 through 10] do not limit or regulate the practice of Native American
 28 traditional healing or faith healing.

29 (5) (a) The provisions of [sections 1 through 10] do not limit or regulate the practice of any person who
 30 uses:

(i) touch, words, and directed movement to deepen awareness of existing patterns of movement in the body, as well as to suggest new possibilities of movement. Exempt practices under this subsection (5)(a)(i) include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, and body-mind centering.

(ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempt practices under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy, acupuncture, jin shin do, qigong, reiki, shiatsu, and tui na.

(iii) touch to effect change on the integration of the structure of the physical body. Exempt practices under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration ^{of Rolfing} and Hellerwork.

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person's services are not designated as or implied to be massage therapy.

NEW SECTION. Section 5. Powers and duties of board -- rulemaking authority. The board shall:

(1) adopt rules necessary or proper to administer and enforce [sections 1 through 10];

~~(2) adopt rules that specify the scope of practice of massage therapy that are consistent with the definition of massage therapy provided in [section 3];~~

~~(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;~~

~~(4) adopt rules that set nonrefundable fees for license application and license renewal that are commensurate with costs;~~

~~(5) ADOPT RULES ESTABLISHING REASONABLE REQUIREMENTS FOR CONTINUING EDUCATION, WHICH MUST REQUIRE 12 HOURS OF CONTINUING EDUCATION TO BE COMPLETED IN EACH 2-YEAR PERIOD;~~

~~(6) meet as often as necessary for the conduct of business but at least twice a year; and~~

~~(7) take disciplinary action necessary to protect the public~~ ^{as provided for in title 37, chapter 1}

OK. 37- already contains this

NEW SECTION. Section 6. Duty to report violations -- immunity from liability -- disciplinary action.

(1) A massage therapist shall report to the board any information that appears to show that another massage therapist is:

(a) mentally or physically unable to engage safely in the practice of massage therapy; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under [sections 1 through 10] or under rules adopted by the board.

(2) A massage therapist who files a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(3) The board, after due notice and opportunity for a hearing, may refuse to license any applicant and may suspend, revoke, or refuse to renew a license of or may take lesser disciplinary action against any licensed person who:

(a) has been convicted of violating any state or federal narcotic law;

(b) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule, including but not limited to engaging in or soliciting sexual relations with a client, sexual exploitation, sexual contact, or sexual intercourse;

(c) is guilty, in the judgment of the board, of gross negligence in the practice of massage therapy;

(d) has obtained or attempted to obtain licensure by fraud or material misrepresentation; or

(e) has practiced massage therapy beyond the scope and limitation of the person's training and education.

NEW SECTION. Section 7. License required -- enjoining unlawful practice. (1) As of July 1, 2010, a person who is not eligible for a transitional license as provided for in UNDER [section 6] may not practice or purport to practice massage therapy without first obtaining a license under the provisions of [sections 1 through 40] SECTION 8.

(2) A person who is not licensed as a massage therapist under this section or [section 6], whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist. A person who

1 knowingly violates the provisions of this subsection is guilty of a misdemeanor as provided in [section 10].

2
3 **NEW SECTION. Section 8. Qualifications for licensure.** (1) To be eligible for licensure as a massage
4 therapist as provided in [section 7], an applicant:

5 (a) shall submit an application on a form provided by the department;

6 (b) shall include with the application the application fee set by the board;

7 ~~(c) must possess a high school diploma or its equivalent;~~ (c) must possess a high school
8 ~~(d) must be at least 18 years of age; and~~ diploma or its equivalent;

9 ~~(e) must be of good moral character.~~ (e) must be of good moral character.

10 (2) The applicant, in addition to the requirements established in subsection (1), is required to successfully
11 complete a massage therapy program of a minimum of 500 hours of study that meets ~~the criteria of a nationally~~ ^{or exceeds curriculum}
12 ~~recognized accreditation program designated by the board and:~~ ^{established by any}
13 ~~(a) receive a passing score on an examination prescribed by the board; or~~ ^{program or organization}
14 ~~(b) possess an equivalent current license, certification, or registration in good standing from another~~ ^{accredited by the national}
15 ~~state.~~ ^{commission}
16 ^{for certifying}
17 ^{agencies or its}
18 ^{equivalent}
19 ^{or successor}
20 ^{and}

17 **NEW SECTION. Section 9. Transitional licensure INITIAL LICENSURE -- GRANDFATHER CLAUSE.** (1) As
18 of July 1, 2010, the board ~~may~~ ^{shall} issue a ~~transitional~~ massage therapy license to an applicant who applies or has
19 applied for a ~~transitional~~ license by paying the application fee and by providing a signed affidavit to the board that
20 the applicant has engaged in the practice of massage therapy for at least 100 hours in Montana prior to applying
21 for a ~~transitional~~ massage therapy license UNDER THIS SECTION. The board shall by rule establish the application
22 fee not later than January 1, 2010. ^{and that the applicant meets the requirements}
23 ^{of Section 7(1)(a), (1)(b), (1)(d), and (1)(e)}

24 ~~(2) A transitional license issued under this section expires on June 30, 2013. A transitional license is~~
25 ~~not subject to renewal. On or after July 1, 2013, a person who held a transitional license, meets the requirements~~
26 ~~of [section 8(1)], and provides the board with proof of completing 500 hours of education that conforms to~~
27 ~~established educational requirements determined by the board must be issued a valid massage therapy license~~
28 ~~subject to the same renewal requirements and renewal fees as a license issued pursuant to [section 8].~~

29 (2) (A) A LICENSE ISSUED UNDER THIS SECTION IS VALID FOR THE SAME INITIAL PERIOD AS A LICENSE ISSUED
30 UNDER [SECTION 8] AND IS SUBJECT TO THE SAME RENEWAL REQUIREMENTS AND RENEWAL FEES AS A LICENSE ISSUED
UNDER [SECTION 8].

(B) A PERSON MAY NOT APPLY FOR LICENSURE UNDER THIS SECTION AFTER JULY 1, 2012.

NEW SECTION. Section 10. Penalty. Any person who knowingly violates any provisions of [sections 1 through 10] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 11. Board of massage therapy. (1) There is a board of massage therapy.

(2) The board consists of five members appointed by the governor with the consent of the senate. The members are:

(a) one representative of the public who is not a medical practitioner ^{of an owner of a school that educates} and is not engaged in or directly ^{massage} connected with the practice of massage therapy;

(b) one member who is a ^{licensed health care provider in good standing in Montana} ~~Montana physician, chiropractor, physical therapist, nurse, or naturopathic~~ ^{therapist} physician and who is not an owner of a school that educates massage therapists; and

(c) three massage therapists, none of whom may be an owner of a school that educates massage therapists, who have been actively engaged in the practice of massage therapy for at least 3 years prior to being appointed to the board. ^{none of the three massage therapists may belong to the same national} After the initial appointments are made to establish the board, each of the three members must be licensed as a massage therapist under [sections 1 through 10]. ^{professional association.}

(3) Members shall serve 4-year, staggered terms. The governor may remove a member from the board for neglect of duty required by law, for incompetence, or for unprofessional or dishonorable conduct.

(4) The governor shall make the initial appointments to the board as follows:

(a) one person who is a massage therapist to serve a 2-year term;

(b) one person who is a massage therapist to serve a 3-year term; and

(c) one person who is a massage therapist to serve a 4-year term.

(5) At the expiration of terms provided in subsection (4), the governor shall appoint the person designated to fill each position to a 4-year term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. Section 12. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the

1 provisions of Title 2, chapter 15, part 17, apply to [section ¹⁰~~11~~].

2

3 NEW SECTION. ~~Section 13.~~ ¹³ **Effective date.** [This act] is effective on passage and approval.

4

- END -